

FIRST REGULAR SESSION

# SENATE BILL NO. 707

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

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TERRY L. SPIELER, Secretary.

2586S.011

## AN ACT

To repeal section 375.936, RSMo, and to enact in lieu thereof one new section relating to the definition of unfair trade practices in the business of insurance.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 375.936, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 375.936, to read as follows:

375.936. Any of the following practices, if committed in violation of section  
2 375.934, are hereby defined as unfair trade practices in the business of insurance:

3 (1) "Boycott, coercion, intimidation", entering into any agreement to  
4 commit, or by any concerted action committing any act of boycott, coercion or  
5 intimidation resulting in or tending to result in an unreasonable restraint of, or  
6 monopoly in, the business of insurance;

7 (2) "Defamation", making, publishing, disseminating, or circulating,  
8 directly or indirectly, or aiding, abetting or encouraging the making, publishing,  
9 disseminating or circulating of any oral or written statement or any pamphlet,  
10 circular, article or literature which is false, or maliciously critical of or derogatory  
11 to the financial condition of any insurer, and which is calculated to injure such  
12 insurer;

13 (3) "Failure to maintain complaint handling procedures", failure of any  
14 person to maintain a complete record of all the complaints which it has received  
15 for a period of not less than three years. This record shall indicate the total  
16 number of complaints, their classification by line of insurance, the nature of each  
17 complaint, the disposition of these complaints, and the time it took to process  
18 each complaint. For purposes of this subdivision, "complaint" shall mean any  
19 written communication primarily expressing a grievance;

20 (4) "False information and advertising generally", making, publishing,

21 disseminating, circulating or placing before the public, or causing, directly or  
22 indirectly, to be made, published, disseminated, circulated, or placed before the  
23 public, in a newspaper, magazine or other publication, or in the form of a notice,  
24 circular, pamphlet, letter or poster or over any radio or television station, or in  
25 any other way, an advertisement, announcement or statement containing any  
26 assertion, representation or statement with respect to the business of insurance  
27 or with respect to any insurer in the conduct of his insurance business, which is  
28 untrue, deceptive or misleading;

29 (5) "False statements and entries:"

30 (a) Knowingly filing with any supervisory or other public official, or  
31 knowingly making, publishing, disseminating, circulating or delivering to any  
32 person, or placing before the public, or knowingly causing, directly or indirectly,  
33 to be made, published, disseminated, circulated, delivered to any person, or  
34 placed before the public, any false material statement of fact as to the financial  
35 condition or dealings of an insurer;

36 (b) Knowingly making any false entry of a material fact in any book,  
37 report or statement of any insurer or knowingly omitting to make a true entry of  
38 any material fact pertaining to the business of such insurer in any book, report  
39 or statement of such insurer;

40 (6) "Misrepresentations and false advertising of insurance policies",  
41 making, issuing, circulating, or causing to be made, issued or circulated, any  
42 estimate, illustrations, circular or statement, sales presentation, omission, or  
43 comparison which:

44 (a) Misrepresents the benefits, advantages, conditions, or terms of any  
45 policy;

46 (b) Misrepresents the dividends or share of the surplus to be received on  
47 any policy;

48 (c) Makes any false or misleading statements as to the dividends or share  
49 of surplus previously paid on any policy;

50 (d) Is misleading or is a misrepresentation as to the financial condition  
51 of any insurer, or as to the legal reserve system upon which any life insurer  
52 operates;

53 (e) Uses any name or title of any policy or class of policies  
54 misrepresenting the true nature thereof;

55 (f) Is a misrepresentation for the purpose of inducing or tending to induce  
56 the purchase, lapse, forfeiture, exchange, conversion, or surrender of any policy,

57 including any intentional misquote of a premium rate;

58 (g) Is a misrepresentation for the purpose of effecting a pledge or  
59 assignment of or effecting a loan against any policy; or

60 (h) Misrepresents any policy as being shares of stock;

61 (7) "Misrepresentation in insurance applications", making false or  
62 fraudulent statements or representations on or relative to an application for a  
63 policy, for the purpose of obtaining a fee, commission, money, or other benefit  
64 from any insurer, agent, agency, broker or other person;

65 (8) "Prohibited group enrollments", no insurer shall offer more than one  
66 group contract of insurance through any person unless such person is licensed  
67 pursuant to law; however, this prohibition shall not apply to employer-employee  
68 relationships, nor to any such enrollments;

69 (9) "Rebates":

70 (a) Except as otherwise expressly provided by law, knowingly permitting  
71 or offering to make or making any contract of life insurance, life annuity, accident  
72 and health insurance or other insurance, or agreement as to such contract other  
73 than as plainly expressed in the insurance contract issued thereon, or paying or  
74 allowing, or giving or offering to pay, allow, or give, directly or indirectly, as  
75 inducement to such insurance or annuity, any rebate of premiums payable on the  
76 contract, or any special favor or advantage in the dividends or other benefits  
77 thereon, or any valuable consideration or inducement whatever not specified in  
78 the contract; or giving, or selling, or purchasing or offering or to give, sell, or  
79 purchase as inducement to such insurance contract or annuity or in connection  
80 therewith, any stocks, bonds or other securities of any insurance company or  
81 other corporation, association, or partnership, or any dividends or profits accrued  
82 thereon, or anything of value whatsoever not specified in the contract;

83 (b) Nothing in subdivision (11) or paragraph (a) of this subdivision shall  
84 be construed as including within the definition of discrimination or rebates any  
85 of the following practices:

86 a. In the case of any contract of life insurance or life annuity, paying  
87 bonuses to nonparticipating policyholders or otherwise abating their premiums  
88 in whole or in part out of surplus accumulated from nonparticipating insurance;  
89 provided that any such bonuses or abatement of premiums shall be fair and  
90 equitable to policyholders and for the best interest of the company and its  
91 policyholders;

92 b. In the case of life insurance policies issued on the industrial debit plan,

93 making allowance to policyholders who have continuously for a specified period  
94 made premium payments directly to an office of the insurer in an amount which  
95 fairly represents the saving in collection expenses;

96 c. Readjustment of the rate of premium for a group insurance policy based  
97 on the loss or expense experience thereunder, at the end of the first or any  
98 subsequent policy year of insurance thereunder, which may be made retroactive  
99 only for such policy year;

100 (10) "Stock operations and advisory board contracts", issuing or delivering  
101 or permitting agents, officers or employees to issue or deliver, agency company  
102 stock or other capital stock, or benefit certificates or shares in any common law  
103 corporation, or securities or any special or advisory board contracts or other  
104 contracts of any kind promising returns and profits as an inducement to  
105 insurance;

106 (11) "Unfair discrimination":

107 (a) Making or permitting any unfair discrimination between individuals  
108 of the same class and equal expectation of life in the rates charged for any  
109 contract of life insurance or of life annuity or in the dividends or other benefits  
110 payable thereon, or in any other of the terms and conditions of such contract;

111 (b) Making or permitting any unfair discrimination between individuals  
112 of the same class and of essentially the same hazard in the amount of premium,  
113 policy fees, or rates charged for any policy or contract of accident or health  
114 insurance or in the benefits payable thereunder, or in any of the terms or  
115 conditions of such contract, or in any other manner whatever, including any  
116 unfair discrimination by not permitting the insured full freedom of choice in the  
117 selection of any duly licensed physician, surgeon, optometrist, chiropractor,  
118 dentist, psychologist, pharmacist, pharmacy, or podiatrist; except that the terms  
119 of this paragraph shall not apply to health maintenance organizations licensed  
120 pursuant to chapter 354, RSMo;

121 (c) Making or permitting any unfair discrimination between individuals  
122 or risks of the same class and of essentially the same hazards by refusing to  
123 issue, refusing to renew, canceling or limiting the amount of insurance coverage  
124 on a property or casualty risk because of the geographic location of the risk;

125 (d) Making or permitting any unfair discrimination between individuals  
126 or risks of the same class and of essentially the same hazards by refusing to  
127 issue, refusing to renew, canceling or limiting the amount of insurance coverage  
128 on a residential property risk, or the personal property contained therein, because

129 of the age of the residential property;

130 (e) Refusing to insure, refusing to continue to insure, or limiting the  
131 amount of coverage available to an individual because of the gender or marital  
132 status of the individual; however, nothing in this paragraph shall prohibit an  
133 insurer from taking marital status into account for the purpose of defining  
134 persons eligible for dependent benefits;

135 (f) Refusing to insure solely because another insurer has refused to issue  
136 a policy, or has canceled or has refused to renew an existing policy for which that  
137 person was the named insured, nor shall any insurance company or its agent or  
138 representative require any applicant or policyholder to divulge in a written  
139 application or otherwise whether any insurer has canceled or refused to renew or  
140 issue to the applicant or policyholder a policy of insurance, provided that an  
141 insurer may require the name of the prior carrier in order to verify the  
142 applicant's previous claims or medical history;

143 (g) Canceling or refusing to insure or refusing to continue to insure a  
144 policy solely because of race, gender, color, creed, national origin, or ancestry of  
145 anyone who is or seeks to become insured;

146 (h) Terminating, or modifying coverage or refusing to issue or refusing to  
147 renew any property or casualty policy or contract of insurance solely because the  
148 applicant or insured or any employee of either is mentally or physically impaired;  
149 except that this paragraph shall not apply to accident and health insurance sold  
150 by a casualty insurer and, in addition, this paragraph shall not be interpreted to  
151 modify any other provision of law relating to the termination, modification,  
152 issuance or renewal of any insurance policy or contract;

153 (i) **Denying or refusing to accept an invitation for insurance, or**  
154 **refusing to insure, refusing to renew, canceling, restricting, or**  
155 **otherwise terminating a policy of insurance, or charging a differential**  
156 **rate for the same coverage, based upon the applicant's or insured's past**  
157 **or future lawful travel destinations. Nothing in this section shall**  
158 **prohibit a life insurer from excluding or limiting coverage of specific**  
159 **lawful travel, or charging a differential premium or rate for such**  
160 **coverage, when difference in risk or exposure has been substantiated**  
161 **through sound actuarial principles or is related to actual or reasonably**  
162 **anticipated experience;**

163 (j) The provisions of paragraphs (c), (d), (e), (f), (g), and (h) of this  
164 subdivision shall not apply if:

165 a. The refusal, cancellation, limitation, termination or modification is for  
166 a business purpose which is not a mere pretext for unfair discrimination, or

167 b. The refusal, cancellation, limitation, termination or modification is  
168 required by law or regulatory mandate;

169 (12) "Unfair financial planning practices", an insurance producer, agent,  
170 broker or consultant:

171 (a) Holding himself out, directly or indirectly, to the public as a financial  
172 planner, investment adviser, financial consultant, financial counselor, or any  
173 other specialist engaged in the business of giving financial planning or advice  
174 relating to investments, insurance, real estate, tax matters, or trust and estate  
175 matters when such person is in fact engaged only in the sale of policies; provided,  
176 however, an insurance producer, agent, broker or consultant who has passed a  
177 professional course of study may use the symbol of the professional designation  
178 on his or her business card or stationery;

179 (b) Engaging in the business of financial planning without disclosing to  
180 the client prior to the execution of the agreement provided for in paragraph (c)  
181 of this subdivision or solicitation of the sale of a product or service that:

182 a. He is also an insurance salesperson; and

183 b. That a commission for the sale of an insurance product will be received  
184 in addition to a fee for financial planning, if such is the case. The disclosure  
185 requirement under this paragraph may be met by including it in any disclosure  
186 required by federal or state securities law;

187 (c) Charging fees, other than commissions, for financial planning by  
188 insurance agents, brokers or consultants, unless such fees are based upon a  
189 written agreement, which is signed by the party to be charged in advance of the  
190 performance of the services under the agreement. A copy of the agreement shall  
191 be provided to the party to be charged at the time the agreement is signed by the  
192 party and:

193 a. The services for which the fee is to be charged must be specifically  
194 stated in the agreement;

195 b. The amount of the fee to be charged or how it will be determined or  
196 calculated must be specifically stated in the agreement;

197 c. The agreement must state that the client is under no obligation to  
198 purchase any insurance product through the insurance agent, broker or  
199 consultant.

200 The insurance agent, broker or consultant shall retain a copy of the agreement

201 for not less than three years after completion of services, and a copy shall be  
202 available to the director upon request;  
203 (13) Any violation of section 375.445.

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